UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 22nd day of December, 1995

LOS ANGELES INTERNATIONAL AIRPORT RATES PROCEEDING	:	Docket 50176
SECOND LOS ANGELES INTERNATIONAL AIRPORT RATES PROCEEDING	:	Docket OST-95-474

ORDER EXTENDING STAY

We issued a final decision under 49 U.S.C. 47129 in which we determined that the landing fees charged at Los Angeles International Airport (LAX) from July 1, 1993 through June 30, 1995, were unreasonable insofar as those fees included a rental cost for the airfield and apron land based on the land's estimated fair market value. Order 95-6-36 (June 30, 1995). The City of Los Angeles (the City) is seeking judicial review of that decision. When the City increased the LAX landing fees for the fiscal year beginning July 1, 1995, it included a charge based on the fair market value of the airfield and apron land. The City and the major airlines serving LAX agreed that the portion of the landing fees representing that charge will be paid to an escrow account, not to the City, unless and until the courts reverse our decision on the land valuation issue. We stayed on an interim basis our determination on that issue with respect to fees charged after that determination. Order 95-9-8 (September 8, 1995).

Our interim stay order invited interested persons to comment on the stay issue. No one has objected to the stay. We are therefore extending the stay until the courts rule on the City's petition for review of our final decision in the first LAX case.

Our Grant of an Interim Stay

We held a hearing on the LAX fees in the Los Angeles International Airport Rates Proceeding, Docket 50176, due to a complaint filed under 49 U.S.C. 47129 by the Air

Transport Association and sixteen airlines (the Complainants). Our final decision in that proceeding, Order 95-6-36 (June 30, 1995), determined (i) that the LAX landing fees adopted by the City in 1993 were unreasonable insofar as those fees included a rental cost for the airfield and apron land based on the land's estimated fair market value, (ii) that the sixteen airlines that filed the original complaint against the fees were entitled to refunds with interest for the portion of the fees representing the excessive land valuation, (iii) that the City's allocation of the cost of one fire engine company to the landing fee rate base was also unreasonable, and (iv) that the Complainants had otherwise failed to show that the landing fees were unreasonable. Our order barred the City from including a charge for the fair market value of the airfield and apron land in landing fees at LAX.

The City, the Complainants, and a number of other airlines have filed petitions for judicial review of our decision. City of Los Angeles et al. v. the Department of Transportation et al., D.C. Cir. Nos. 95-1344 et al. (filed July 7, 1995).

We later granted the City's request for a stay of the City's obligation to make refund payments on the landing fees adopted in 1993 pending a final decision on the City's petition for judicial review. Order 95-7-33 (July 25, 1995).

However, shortly before we issued our decision in the Los Angeles International Airport Rates Proceeding, the City increased the landing fees for LAX for the fiscal year beginning July 1, 1995. The new fees, like the fees adopted in 1993, include a charge based on the fair market value of the airfield and apron land.

The Air Transport Association (ATA) and fifty-nine airlines filed a complaint under 49 U.S.C. 47129 against the reasonableness of the new LAX landing fees (Docket OST-95-474). The airlines complained that the new fees are unreasonable for several reasons, one of which is the City's use of a charge based on the fair market value of the land.

Before we had determined whether to set that complaint for hearing under the expedited procedures created by 49 U.S.C. 47129, the City filed a response to Order 95-7-33 informing us that it had entered into an escrow agreement with the major airlines serving LAX. The City stated that all of the airlines serving the airport would pay into an escrow account that portion of the new landing fee representing the charge for the fair market value of the airfield and apron land. The parties had agreed that the amount is $0.28 per thousand pounds landed weight. These payments would be held in the escrow account until the resolution of the pending petitions for judicial review. The City cannot obtain the funds unless and until the courts reverse our decision that the City may not include a charge for the fair market value of the airfield and apron land.

The City represented that it had postponed the airlines' obligation to pay landing fees while it was negotiating the escrow agreement. As a result, the airlines' first

payment for landing fees incurred during the fiscal year beginning July 1, 1995, was due September 10.

We granted the City a temporary stay of our requirement that the City may not lawfully charge a landing fee based in part on the fair market value rather than the historic cost of the airfield and apron land. Order 95-9-8 (September 8, 1995). We acted before the end of the standard comment period on the City's filing, because we thought the stay should be in effect before the airlines made their first payment of the new fees. We stated we would decide whether to extend the stay after interested persons had an opportunity to file comments on the City's pleadings. We made the comments due September 14.

After we granted the interim stay, we ruled that the airlines filing the complaint against the current LAX fees are entitled to a hearing under 49 U.S.C. 47129 on that complaint. Order 95-9-24 (September 22, 1995). Although we asked the administrative law judge to hold a hearing on most of the issues presented by the airlines' complaint, we stated that he should not consider the land valuation issue, since that issue should not be relitigated. Order 95-9-24 at 20.

We are issuing today our final decision in that proceeding which, among other things, concludes again that the City's use of fair market value for the airfield and apron land is unreasonable.

The Pleadings

Only the Complainants filed a response to our order. They assert that the City's continued use of a charge based on the fair market value of the airfield and apron land is unlawful and that the escrow agreement with the City does not prevent the airlines from prosecuting their complaint against the reasonableness of the new fees, including the City's use of the fair market valuation charge. They believe that no action by us was needed on the escrow agreement.[1]

In its response the City asks us to continue the stay until the completion of judicial review. The City contends that the stay is justified since the escrow agreement protects the rights of all the parties pending judicial review and was voluntarily entered into by the City and the airline parties.

Our Decision

[1] The Complainants' comment on the interim stay order takes the same position as their September 8 response to the City's pleading that caused us to issue the interim stay order. We were unable in Order 95-9-8 to consider the Complainants' earlier pleading, since it was filed the day that we issued the order.

We have decided to maintain the stay until the completion of judicial review of our decision in the first LAX case on the land valuation issue. No one has objected to the stay. While the City's maintenance of the charge for the fair market value for the airfield and apron land is contrary to our final decision in the first LAX case, the escrow agreement, to which the major airlines have agreed, will protect the airlines' rights pending the completion of judicial review. Since the statute, 49 U.S.C. 47129(d)(1)(C) and (e)(1), makes it clear that we should honor agreements between airlines and airport operators about airport fees, we will extend the stay so that the parties may carry out that agreement. Without the stay the City would be unable to impose a fee including a charge based on the fair market value of the airfield and apron land, even though the major airlines have agreed with the City that the airlines would pay the amount of that charge pending the court's decision on our first LAX case.

The stay will expire after the courts issue their final decision on our decision on the land valuation issue in the first LAX case. Continuing the stay for that period is consistent with the parties' escrow agreement.

ACCORDINGLY:

1. We stay our determination that the respondents, the City of Los Angeles, the City of Los Angeles Department of Airports, and the Los Angeles Board of Airport Commissioners, may not lawfully use the fair market value of the airfield and apron land in calculating landing fees for Los Angeles International Airport;

2. The stay granted by the first ordering paragraph shall remain in effect until there is a final, non-reviewable judgment on the Department's decision in the Los Angeles International Airport Rates Proceeding, Order 95-6-36 (June 30, 1995), that the respondents may not use the fair market value of the airfield and apron land in calculating landing fees at Los Angeles International Airport;

3. Our grant of the stay by the first ordering paragraph is based upon the willingness of the respondents to accept an escrow arrangement for the portion of the landing fees representing the charge based upon the fair market value of the airfield and apron land; and

4. We grant the motion for leave to file an unauthorized document filed by the Air Transport Association et al. on September 8, 1995.

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)